IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.MC.No. 2802 of 2001()

CC.431/2000 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI
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PETITIONER: ACCUSED NO: 5

MR. C.P. MADHAVAN
TRISEVA PARIWAHAN SERVICES LTD
6/277. MANNAM SATABDHI BLDG
ANAVATHIL, MATTANCHERRY. KOCHI-682 002

BY ADV. SRI.K.N.SIVASANKARAN

RESPONDENTS: COMPLAINANT AND ACCUSED 1 TO 4 & 6 TO 8
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1. **STATE OF KERALA, REP BY THE PUBLIC PROSECUTOR**
   HIGH COURT OF KERALA,
   ERNAKULAM

2. **SMT. SUKH VARSHA KAPOOR**
   W/0. BALVIRKISHAN GUPTA., PROPIETOR
   RINKU TRADING CO., VI/432. BAZAR ROAD
   MATTANCHERRY, KOCHI-2 (RESIDING AT 5/134
   KAPOOR BHAVAN, ST. ANTONY'S ROAD
   CHULLICKAL, KOCHI - 682 050

3. **MR. SANJAY KUMAR GUPTA, AGED 34 YEARS**
   S/O. BALVIRKISHAN GUPTA. RESIDING AT 5/134
   KAPOOR BHAVAN,. ST. ANTONY'S ROAD
   CHULLICKAL, KOCHI - 682 005

4. **SMT. PREETHI KAPOOR GUPTA, AGED**
   W/O. SANJAY KUMAR GUPTA, RESIDING AT 5/134
   KAPOOR BHAVAN, T. ANTONY'S ROAD
   CHULLICKAL, KOCHI - 682 005

5. MR. SUSHIL GUPTA, S/O. BALVIKISHAN GUPTA
PROPRIETOR TARUN ENTERPRISES, SHOP NO: 2
AMAR NAGER JULLUNDER CITY

6. MR. S. SHARMA, REGIONAL MANAGER
TRISEVA PARIWAHAN SERVIVES LTD.
452, NAYA BAZAR, NEW DELHI - 110 006

7. MR. RAJESH AGARWAL
PARTNER ASSAM FREIGHT CARRIERS, 7 WESTERN ST.
KOLKATA - 700 002

8. MR. SOMA DUTT BHARADWAJ
BRANCH MANAGER, ARGO CARRIERS INDIA,
7 RAVINDRA SARANI, KOLKATA - 700 001

(RESPONDENTS 2 TO 8 DELETED AS PER ORDER DT. 3.8.2005)

ADDL. R9
BANK OF INDIA, COCHIN BRANCH, .C. 6/961 (A)
BAZAR ROAD, POST BOX NO: 177/ MATTANCHERRY
COCHIN 692 002
(IMPLEADED AS PER ORDER DT 3.8.2005 IN CRL.M.A. 9563/05)

BY PUBLIC PROSECUTOR SHRI. AMJATH ALI
R7 BY ADV SRI.THOMAS CHAZHUKKARAN
SRI.P.K.RAVINDRAN PUZHANKARA
SMT.JAYASREE MANOJ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/09/2007, ALONG WITH CRMC NO. 2803 OF 2001 THE COURT ON 15/10/2007 PASSED THE FOLLOWING:

CRMC.2802/2001

ORDER ON CRL. M.P. NO; 2399/2001 IN CRL.M.C. NO; 2802/2001

DISMISSED:

15/10/2007 **SD/- K.R. UDAYABHANU, JUDGE**

jj **/TRUE COPY/**

P.S. TO JUDGE

K.R. UDAYABHANU, J.

CRL.M.C.NOS. 2802 & 2803 OF 2001

DATED THIS THE 15th OCTOBER 2007

ORDER

The 5th accused Carrier in C.C.No.431/2000 is the petitioner in Crl.M.C.No.2802/2001 and the same person who is the 5th accused in C.C.No.430/2000 is the petitioner in Crl.M.C.No.2803/2001. He has sought for getting quashed the above proceedings. Both the charges are with respect to the alleged misappropriation of the consignments of rubber latex forwarded through the 5th accused/ petitioner Carrier. The consignments involved in Crl.M.C.No.2802/2001/C.C.No. 431/2000 is six consignments during the period 1-1-1997 to 11-3-1997 and the consignments involved in Crl.M.C.No.2803/2001/C.C.No.430/2000 are 11 in number sent during the period 23-9-1996 to 31-12-1996. The offences are charge sheeted under Sections 420, 120B read with Section 34 I.P.C. Two other Carriers are also involved and made accused. The de facto complainant is the Manager of Bank of India, Cochin Branch that had provided the bill discounting facility to accused 1 to 3 who owned two enterprises by name Rinku Trading Co.(owned by Accused 1 & 2) and Preethi Enterprises (owned by accused No.3) The consignee was Tarun Enterprises, Jallandhar (owned by the 4th accsed). Accused 1 to 4 are

father, mother, daughter-in-law and son. After getting the bills discounted and receiving the amounts by the consignor, the de facto complainant Bank came to know that the consignee has not remitted the amounts at the branch at Jallandhar and the Bank is allegedly cheated to the tune of Rs.19 and odd lakhs and on 17-4-1997 vide Annexure-D the Bank issued notice to the Carrier asking about the whereabouts of the goods. On 5-5-1997 by Annexure-E letter, the petitioner Carrier informed that the goods are lying at their godown at Gaziabad and directed them to take custody of the same immediately, failing which, it was informed that the consignment will be sold to recover demurrage charges and freight charges amounting to Rs.7,04,667/- and Rs.41,951/- respectively. Thereupon the Bank instituted O.S.No.148/1997 before the Sub Court, Cochin seeking injunction to restrain the Carrier/5th accused from alienating the goods. The petitioner/A5 had stated that they are in possession of the goods and that the delivery can be effected on payment of demurrage and freight charges. The petitioner also filed I.A.No.1638/1997 seeking permission to sell the goods. The Court vide Annexure-R9(a) order appointed Mr. Pramod Kumar Gupta as the

Surveyor to conduct the inspection and sale. Vide Annexure-R9(b) the court issued further directions to identify the goods also. On 28-8-1998, the Surveyor filed Annexure-G report inspecting the goods on 24-7-1998 and the chemical analysis of the goods were also carried out. It is stated that the surveyor had reported that the goods are the same as covered by the consignment. Thereafter on 26-2-1999, auction was conducted by the surveyor and report filed vide Annexure-I. Thereafter on 31-8-1999 the Bank filed I.A.No.926/1999 to withdraw the suit which was allowed vide order dated 31-8-1999. The Bank as well as the petitioner had filed applications before the court below to withdraw the amounts. The criminal complaint vide Annexure-B was filed on 19-2-1998. It is alleged that the criminal proceedings were resorted to only to pressurise the complainant. The petitioner/5th accused has sought for getting quashed the above proceedings as the allegation in the criminal case is that the goods have been misappropriated as a result of the criminal conspiracy among consignors, consignees and the Carrier and that the Carrier released the goods to the consignee without the consignee remitting the amount in the concerned Bank and producing the receipt before

the Carrier which is the procedure envisaged by the Indian Bankers Association (IBA) regarding the discounting facility. It is contended that as it was established in the civil court proceedings, i.e. O.S.No.148/1997 that the goods were still in the godown of the Carrier there is no scope for contending that the accused misappropriated the goods. It is argued by the petitioner/5th accused that the criminal complaint has been initiated only to save the Bank Manager who had colluded with the consignor and enabled the consignor to misappropriate a large sum. It is alleged that the proceedings have been initiated also to see that the demurrage charges and freight charges are not paid to the Carrier as the demurrage charges for 1 ½ years along with the freight charges would exceed the vlaue of the goods.

2. On the other hand the de facto complainant/9th respondent - Bank has disputed the entire allegations and has alleged that the petitioner/5th accused Carrier has violated the formalities regarding the release of the goods stipulated by the Indian Bank Association (IBA) and being an approved carrier, the petitioner/5th accused is bound by the guidelines fixed by the IBA. It is pointed out that in the

proceedings in O.S.No.148/1997, the plaintiff/de facto complainant had specifically disputed the identity of the goods. It is contended that the goods made available for sale and sold in auction by the surveyor were of cheap and inferior quality. It is contended that the goods originally covered by the lorry receipts were released to the consignee long prior to the sale through the process of court. The sale of gods by the surveyor in auction was a stage managed affair. It is further stressed that in O.S.No.148/1997 proceeding the dispute over the identity of the goods had figured permanently. The respondent has also produced Annexure-R9(a) and Annexure R9(b), i.e. the orders of the court in I.A.Nos.1638/1997 in O.S.No.148/1997 filed by the petitioner herein/5th accused and I.A.No.506/1998 in O.S.No.148/1997 filed by the plaintiff wherein the dispute as to the identity has been stressed and the court had ordered the surveyor to ascertain the identity of the goods. It is pointed out that in Annexure-G copy of the surveyor's report the surveyor has expressed inability to identify the goods as no identification marks were found both on the barrels and bags containing the latex and the raw rubber. It is specifically mentioned that "we cannot categorically state that the goods are

against the same consignments submitted for carriage".

3. I find that the police on investigation has found evidence to support the prosecution. As per Annexure-B copy of the compliant it is mentioned that the consignors and the consignee have submitted Form H-2 and Form-L returns before the Rubber Board which would show that the consignee has received the goods long before the initiation of the proceedings herein. I find that the above piece of evidence is quite material in the circumstances. Whether there was delay on the part of the Bank to initiate proceedings and whether there is collusion on the part of the concerned Bank Manager and the consignor (consignee is the close relative, i.e. son of the consignor) are all matters that are to be sorted out at trial. In the circumstances, I find that it cannot be found prima facie that there is no substance in the allegations made in the criminal cases. As observed by the Supreme Court in **Indian Oil Corpn**. v. **NEPC India ltd.(2006)6 S.C.C.73**6 the complaint can be quashed only if the allegations do not prima facie constitute any offence and for this purpose the complaint has to be examined as a whole. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability

or genuineness of the allegations in the compliant is warranted while examining prayer for quashing of a compliant. In the circumstances, I find that the proceedings are not liable to be set aside in exercise of the power under Section 482 Cr.P.C. The Crl.M.Cs. are dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.M.C.NOS.2802 & 2803
OF 2001

ORDER

15-10-2007

K.R. UDAYABHANU, J.

CRL.A.NO. OF

DATED THIS THE th June 2007

ORDER

K.R.UDAYABHANU, JUDGE

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